grammatical sense. It seems arbitrary to a degree to refuse effect to the author's meaning when sufficiently expressed, simply because the language used might have been a better expression for another meaning if the author had entertained it.

ARREST OF MISDEMEANANTS. — The case of *Brown* v. *Weaver*, 23 So. Rep. 388 (Miss.), rules that when a deputy sheriff shoots a misdemeanant who is fleeing to escape after arrest he exceeds his authority, and that the sheriff and his bondsmen are liable for the act of the deputy. It is generally admitted to be law that if a misdemeanant flees before arrest an officer may not kill him, even if it is not possible to capture him in any other way; and the court in the principal case see no reason why the power of the officer should be greater after arrest. The life of a human being seems to the court a weightier matter in the scale of public policy than the failure of justice in regard to a petty offender. *Thomas* v. *Kinkead*, 18 S. W. Rep. 854 (Ark.); *Reneau* v. *State*, 31 Amer. Rep. 626 (Tenn.).

The opposite view seems to find its sole exponent in Mr. Bishop, Criminal Procedure, vol. i. § 161, and note. Mr. Bishop's general argument is that it is necessary that the servants of the law have absolute power to enforce its commands. In a polemic note he puts the hypothetical case of a pugilist successfully defying a court because its servants have not the power to kill as a last resort. He relies also on the admitted rule of law that if any man, misdemeanant or felon, resists a legal arrest and is killed in the struggle, the officer is not liable, civilly or criminally. The cases the author cites do not support his contention. Such arguments fail to convince the ordinary mind. Surely the majesty of the law is not greatly lessened when an officer refrains from shooting his prisoner, nor is it probable that there would be any marked change in the general conduct of misdemeanants if they learned that officers had no power to kill them. On the other hand, to put into the hands of an ordinary officer of uncertain discretion a power to kill fleeing and unresisting misdemeanants is to create a very grave and immediate danger.

It seems clear, then, not only that the result which the case reaches is sound, but also that the case is far from the line. The rigid rule that an officer may kill a fleeing felon, though not a misdemeanant, — adequate as it may have been in the old law, — is not satisfactory to-day. Modern ideas of public policy, vague and incapable of definition as they are in this regard, tend to limit the officer's power toward felons as well.

IS A VIEW BY THE JURY PART OF THE TRIAL? — A trial for murder is so laborious and protracted an affair that some courts are inclined to search far for reasons by which to avoid setting aside a trial once held for a mere technical error of procedure. The case of *People* v. *Thorn*, 50 N. E. Rep. 947 (N. Y.), is perhaps an example of this inclination. A murder had been committed under particularly atrocious circumstances. In the course of the trial, the jury were sent to take a view of the premises where the crime was committed. The prisoner at his own special request did not accompany them; but when the verdict of guilty was finally rendered, he raised the objection that he had not been present through the whole trial, and was therefore entitled to be tried again. The

Court of Appeals overruled this objection (O'Brien and Bartlett, JJ., dissenting). The possibility of the prisoner waiving his rights was passed over, and the decision was rested on the ground that he had, as a matter of fact, been present during the whole proceeding, that the view was not a part of the trial, and "that the knowledge acquired by the jury in inspecting the premises was to enable them to better understand the evidence and not to obtain original testimony." The weight of authorities seems against this position: *People* v. *Palmer*, 43 Hun, 401; *People* v. *Bush*, 68 Cal. 623; and the weight of reason is also opposed. In this particular case the absence of the accused does not seem to have influenced the decision. But under different circumstances it might well prove of great importance to have the opportunity of observing the conduct and actions of the jury when taking the view. Suppose, for instance, between the murder and the trial the premises had accidentally become changed in appearance, the jury noting the discrepancy between the testimony and the facts might draw conclusions of vital moment against the defendant's witnesses. If it be argued that the jury are forbidden by the court to draw conclusions from what they see, the answer is that it is impossible to enforce obedience. Throughout the whole trial the jury must necessarily be comparing the testimony they hear with what they have seen. It is noteworthy, moreover, that when handwriting, bloodstains, or footprints are shown the jury, it is called the production of real evidence, and no one contends that examination by the jury of these matters is not a part of the trial. A "view" is hard to distinguish from this so-called real evidence. Giving the juryman a view of the premises is something more than giving him a mere instrument, like an eyeglass or an ear-trumpet. It is furnishing him with a basis for inference which will unavoidably be utilized. Hard though it seems to nullify a whole proceeding for such a small reason, yet it is better so, than to set a precedent of disregarding the rights of persons accused of crime.

WHEN IS A SHIP A TOTAL LOSS?— It remained for a late decision of the House of Lords to declare for the first time that a sunken ship is to be considered for the purposes of insurance as a total loss. *The Blairmore Co.* v. *Macredie*, 1898, App. Cas. 593. Doubtless no marine insurer was ever so bold as to contend otherwise. In that case the ship "Blairmore," insured for £15,000, sunk in a squall in San Francisco Harbor. The owners declared her a total loss, and formally abandoned her. Thereupon the underwriters raised her at an expense of £9,500, estimated that she could now be repaired for £1,500, and offered the ship and that sum to the owners. The owners refused, and brought suit for the full amount of the insurance. They contended that the ship was, and remained, a total loss. The underwriters practically conceded that the loss was once total, but claimed that when the ship was raised the loss became a partial one. The case was finally carried to the House of Lords. Their Lordships differed much in their reasons for their decisions, but the result was that the owners succeeded.

A ship is considered a constructive total loss under circumstances when a prudent uninsured owner would abandon her. *Adams* v. *Mackenzie*, 13 C. B. N. S. 442. Now in the principal case it is seen that a prudent owner would have abandoned the sunken but not the raised ship. The problem presented, then, was whether the rights of the